Walton Mirror Works, Inc. and Waldon Mirror and Blinds, Inc. *and* Glass Warehouse Workers and Paint Handlers Local Union 206, International Brotherhood of Painters and Allied Trades, AFL–CIO and United Production Workers Union, Local 17–18, Party to the Contract. Cases 29–CA–16083, 29–CA–16180, 29–CA–16325, 29–CA–16339, 29–CA–16385–1, and 29–CA–16385–2

May 23, 1994

DECISION AND ORDER

BY MEMBERS STEPHENS, DEVANEY, AND BROWNING

On November 5, 1993, Administrative Law Judge D. Barry Morris issued the attached decision. The General Counsel filed exceptions, the Charging Party filed exceptions and a supporting brief, the Respondent filed cross-exceptions and a supporting brief, and the Charging Party filed an answering brief to the Respondent's cross-exceptions.[1]

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

The Board has considered the decision and the record in light of the exceptions and briefs and has decided to affirm the judge's rulings, findings,[2] and conclusions as modified, and to adopt the recommended Order as modified and set forth in full below.

The judge found that the Respondent violated Section 8(a)(1) by telling employees there would not be a union at the new company, threatening to discharge employees if they tried to start a union, and telling an employee that it did not want to rehire some Walton employees because they supported Local 206; violated Section 8(a)(2) by recognizing and entering into a collective-bargaining agreement with Local 17–18; violated Section 8(a)(2) and (3) by maintaining a contract requiring employees to become Local 17–18 members and deducting dues from employees' pay for remittance to Local 17–18; and violated Section 8(a)(5) by dealing directly with employees and making unilateral changes in terms and conditions of employment. The judge failed to include these findings in the conclusions of law, recommended Order, and/or notice. We shall correct these inadvertent errors.

AMENDED CONCLUSIONS OF LAW

1. Insert the following as Conclusions of Law 7 and 8.

''7. By recognizing Local 17–18 and entering into a collective-bargaining agreement with Local 17–18, the Respondent violated Section 8(a)(2) and (1) of the Act.

''8. By maintaining a contract with Local 17–18 requiring employees to become Local 17–18 members and deducting dues from employees' pay for remittance to Local 17–18, the Respondent violated Section 8(a)(2), (3), and (1) of the Act.''

2. Substitute the following for the judge's Conclusion of Law 7 and renumber the subsequent paragraphs.

''9. By interrogating employees about their union activities, by threatening plant closure, by creating an impression of surveillance, by telling employees there would not be a union at the new company, by threatening to discharge employees if they tried to start a union, and by telling an employee that it did not want to rehire some Walton employees because they supported Local 206, the Respondent violated Section 8(a)(1) of the Act.''

AMENDED REMEDY

The judge found that the Respondent negotiated wage rates for Waldon employees which differed from the Local 206 contract rates. The judge's conclusions of law also state that the Respondent's failure to apply the Local 206 contract terms and unilateral change of those terms violated the Act. In accordance with standard Board procedure in these circumstances, we amend the judge's remedy to provide that, on the Union's request, the Respondent shall reimburse employees for any difference between what they were paid and what was called for by the Local 206 contract. Any such backpay shall be computed in accordance with *Ogle Protection Service*, 183 NLRB 682 (1970), enfd. 444 F.2d 502 (6th Cir. 1971), with interest as provided in *New Horizons for the Retarded*, 283 NLRB 1173 (1987).[3] In addition, if any employee has executed dues-checkoff authorizations for Local 206 and the Respondent has failed to honor the authorization, we shall order the Respondent to deduct and remit Union dues as required by the agreement and to reimburse Local

[1] We grant the Charging Party's motion to correct the misspelling of two discriminatees' names, Jose Lozano and Norberto Montanez.

[2] The Respondent has excepted to some of the judge's credibility findings. The Board's established policy is not to overrule an administrative law judge's credibility resolutions unless the clear preponderance of all the relevant evidence convinces us that they are incorrect. *Standard Dry Wall Products*, 91 NLRB 544 (1950), enfd. 188 F.2d 362 (3d Cir. 1951). We have carefully examined the record and find no basis for reversing the findings.

[3] The judge's remedy provides for contractually required payments to the Local 206 Benefit Funds. We leave to the compliance stage the issue of whether the Respondent must pay any additional amounts to the Local 206 Benefit Funds in order to satisfy our ''make-whole'' remedy, including liquidated damages, interest, and reimbursement of any attorney's fees incurred for collection of delinquent contributions, if such payments are required by the collective-bargaining agreement or the applicable trust documents for the Funds. See *Merryweather Optical Co.*, 240 NLRB 1213, 1216 fn. 7 (1979).

206 for its failure to do so, with interest as prescribed in *New Horizons for the Retarded*, supra.

The judge found that the Respondent violated Section 8(a)(5) by failing to recall Lyndon York, Jose Lozano, Sam Furnace, and Norberto Montanez. The General Counsel has excepted to the judge's failure to provide the standard remedial language for such a violation. See, e.g., *Adair Standish Corp*., 292 NLRB 890 (1989), enfd. in relevant part 912 F.2d 854 (6th Cir. 1990). We modify the remedy, recommended Order, and notice to require the Respondent to offer reinstatement to these discriminatees to their former positions or, if those positions are not available, to substantially equivalent positions, without prejudice to their seniority rights or privileges, and make them whole for any loss of earnings and other benefits which they may have suffered by reason of the failure to recall them, with backpay to be computed as set forth elsewhere in the judge's ''Remedy'' section.

The judge found that the Respondent violated Section 8(a)(2) and (3) by deducting Local 17–18 dues from employees' pay. The General Counsel has excepted to the judge's failure to provide the standard remedial language for such a violation. See *Human Development Assn*., 293 NLRB 1228 (1989), enfd. 937 F.2d 657 (D.C. Cir. 1991), cert. denied U.S. 112 S.Ct. 1513 (1992). We modify the remedy, recommended Order, and notice to provide that the Respondent shall reimburse all present and former employees, who may have been coerced into membership in Local 17–18 by virtue of the union-security clause contained in the collective-bargaining agreement with Local 17–18, for moneys paid or withheld from them with interest computed in the manner provided in *New Horizons for the Retarded*, supra.

Because the Respondent's misconduct is so widespread as to demonstrate a general disregard for employee rights, we shall also amend the judge's recommended Order to include a broad cease-and-desist provision. See *NLRB v. Windsor Castle Health Care*, 13 F.3d 619 (2d Cir. 1994), citing *Hickmott Foods*, 242 NLRB 1357 (1979).

ORDER

The National Labor Relations Board orders that the Respondent, Walton Mirror Works, Inc. and its alter ego Waldon Mirror and Blinds, Inc., Brooklyn, New York, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Refusing to recognize and bargain with Glass Warehouse Workers and Paint Handlers Local Union 206, International Brotherhood of Painters and Allied Trades, AFL–CIO as the exclusive representative of its employees in the appropriate unit with respect to wages, hours, working conditions, or other terms and conditions of employment of the employees and refusing to honor the collective-bargaining agreement applicable to those employees.

(b) Recognizing, entering into a contract with, and maintaining a collective-bargaining agreement with United Production Workers Union, Local 17–18.

(c) Interrogating its employees concerning their union activities, threatening plant closure, creating an impression among its employees that their union activities were under surveillance, telling employees there will not be a union at the new company, threatening to discharge employees if they try to start a union, or telling an employee that it does not want to rehire some Walton employees because they supported Local 206.

(d) Engaging in direct dealing with its employees.

(e) Making unilateral changes in the wages and other terms and conditions of employment of its employees.

(f) Discharging employees for activities protected by Section 7 of the Act.

(g) In any other manner interfering with, restraining, or coercing employees in the exercise of their rights under Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) On request, recognize and bargain collectively with Local 206 as the exclusive representative of the employees in the following appropriate unit, and, on request, embody in a signed agreement any understanding reached. The appropriate unit is:

> The unit as set forth in Article IA of the collective-bargaining agreement between Local 206 and Respondent Walton which is effective by its terms from August 1, 1988 through July 31, 1991.

(b) Honor, comply with, and abide by the terms and conditions of the 1991–1994 collective-bargaining agreement between Walton and Local 206, to which Waldon is bound, retroactively to the commencement of Waldon's operations in the second week of November 1991, including making the appropriate payments, in the manner set forth in the judge's ''Remedy'' as amended.

(c) Reimburse its unit employees for any dues and other moneys it deducted from them pursuant to the collective-bargaining agreement with Local 17–18, with interest computed in the manner set forth in the judge's ''Remedy'' as amended.

(d) Withdraw recognition from Local 17–18.

(e) Make any delinquent union dues payments to Local 206, with interest computed in the manner set forth in the judge's ''Remedy'' as amended.

(f) Offer George Feliciano and Luis Prunet immediate and full reinstatement to their former positions or, if such positions no longer exist, to substantially equivalent positions, without prejudice to their seniority or other rights and privileges and make them whole

for any loss of earnings and other benefits with interest, in the manner set forth in the judge's ''Remedy'' as amended.

(g) Remove from its files any references to the unlawful discharges of Feliciano and Prunet and notify them in writing that this has been done and that the discharges will not be used against them in any way.

(h) Offer Lyndon York, Jose Lozano, Sam Furnace, and Norberto Montanez immediate and full reinstatement to their former positions or, if those positions are not available, to substantially equivalent positions, without prejudice to their seniority rights or privileges, and make them whole for any loss of earnings and other benefits with interest, in the manner set forth in the judge's ''Remedy'' as amended.

(i) Preserve and, on request, make available to the Board or its agents for examination and copying, all payroll records, social security payment records, timecards, personnel records and reports, and all other records necessary to analyze the amount of backpay due under the terms of this Order.

(j) Post at its facility in Brooklyn, New York, copies of the attached notice marked ''Appendix.''[4] Copies of the notice, on forms provided by the Regional Director for Region 29, after being signed by the Respondent's authorized representative, shall be posted by the Respondent immediately upon receipt and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material.

(k) Notify the Regional Director in writing within 20 days from the date of this Order what steps the Respondent has taken to comply.

APPENDIX

NOTICE TO EMPLOYEES
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

The National Labor Relations Board has found that we violated the National Labor Relations Act and has ordered us to post and abide by this notice.

Section 7 of the Act gives employees these rights.

> To organize
>
> To form, join, or assist any union
>
> To bargain collectively through representatives of their own choice
>
> To act together for other mutual aid or protection
>
> To choose not to engage in any of these protected concerted activities.

WE WILL NOT refuse to recognize and bargain with Glass Warehouse Workers and Paint Handlers Local Union 206, International Brotherhood of Painters and Allied Trades, AFL–CIO as the exclusive representative of our employees in the appropriate unit with respect to wages, hours, working conditions, or other terms and conditions of employment of the employees and WE WILL NOT refuse to honor the collective-bargaining agreement applicable to those employees.

WE WILL NOT recognize, enter into a contract with, and maintain a collective-bargaining agreement with United Production Workers Union, Local 17–18.

WE WILL NOT interrogate our employees concerning their union activities, threaten plant closure, create an impression among our employees that their union activities are under surveillance, tell employees there will not be a union at the new company, threaten to discharge employees if they try to start a union, or tell an employee that we do not want to rehire some Walton employees because they supported Local 206.

WE WILL NOT engage in direct dealing with our employees.

WE WILL NOT make unilateral changes in the wages and other terms and conditions of employment of our employees.

WE WILL NOT discharge employees for activities protected by Section 7 of the Act.

WE WILL NOT in any other manner interfere with, restrain, or coerce you in the exercise of the rights guaranteed you by Section 7 of the Act.

WE WILL, on request, recognize and bargain collectively with Local 206 as the exclusive representative of our employees in the following appropriate unit, and WE WILL, on request, embody in a signed agreement any understanding reached. The appropriate unit is:

> The unit as set forth in Article IA of the collective-bargaining agreement between Local 206 and Respondent Walton which is effective by its terms from August 1, 1988 through July 31, 1991.

WE WILL honor, comply with, and abide by the terms and conditions of the 1991–1994 collective-bargaining agreement between Walton and Local 206, to which Waldon is bound, retroactively to the commencement of Waldon's operations, including making the appropriate payments.

WE WILL reimburse our unit employees for any dues and other moneys we deducted from them pursuant to the collective-bargaining agreement with Local 17–18, plus interest.

WE WILL withdraw recognition from Local 17–18.

[4] If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading ''Posted by Order of the National Labor Relations Board'' shall read ''Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board.''

WE WILL make any delinquent union dues payments to Local 206, plus interest.

WE WILL offer George Feliciano and Luis Prunet immediate and full reinstatement to their former positions or, if such positions no longer exist, to substantially equivalent positions, without prejudice to their seniority or other rights and privileges and make them whole for any loss of earnings and other benefits, plus interest.

WE WILL remove from our files any references to the unlawful discharges of Feliciano and Prunet and notify them in writing that this has been done and that the discharges will not be used against them in any way.

WE WILL offer Lyndon York, Jose Lozano, Sam Furnace, and Norberto Montanez immediate and full reinstatement to their former positions or, if those positions are not available, to substantially equivalent positions, without prejudice to their seniority rights or privileges, and make them whole for any loss of earnings and other benefits, plus interest.

WALTON MIRROR WORKS, INC. AND WALDON MIRROR AND BLINDS, INC.

Jonathan Leiner, Esq., for the General Counsel.
Steven B. Horowitz, Esq. (Horowitz & Pollack), of South Orange, New Jersey, for the Respondent.
Ralph P. Katz, Esq., of White Plains, New York, for the Charging Party.

DECISION

STATEMENT OF THE CASE

D. BARRY MORRIS, Administrative Law Judge. This case was heard before me in New York City during 18 days of hearing commencing June 11, 1992, and ending December 8, 1992.[1] On several charges, the first of which was filed October 31, 1991, a consolidated complaint was issued on April 28, 1992, alleging that Walton Mirror Works, Inc. (Walton) and Waldon Mirror and Blinds, Inc. (Waldon) violated Section 8(a)(1), (2), (3), and (5) of the National Labor Relations Act (the Act). Respondent filed an answer denying the commission of the alleged unfair labor practices.

The parties were given full opportunity to participate, produce evidence, examine and cross-examine witnesses, argue orally, and file briefs. Briefs were filed by General Counsel, Charging Party, and Respondent. In addition, General Counsel filed a reply brief on March 2, 1993, Charging Party filed a reply brief on April 1, 1993, and Respondent filed a reply brief on April 7, 1993.[2]

On the entire record of the case, including my observation of the demeanor of the witnesses, I make the following

FINDINGS OF FACT

I. JURISDICTION

Respondent Walton, a New York corporation with an office and place of business at 61 Walton Street, Brooklyn, New York, has been engaged in the manufacture and installation of mirrors and related products for other enterprises and for individual retail customers. Since November 15, 1991, Respondent Waldon, a New York corporation with an office and place of business at 220 Stewart Avenue, Brooklyn, New York, has also been engaged in the manufacture and installation of mirrors and related products for other enterprises and for individual retail customers. Waldon has admitted that it annually receives goods valued in excess of $50,000 from locations outside the State of New York. Waldon's accountant testified that the Company's gross revenues were in excess of $500,000 during its first 6 months of operation. It has been admitted, and I find, that Respondent Waldon is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act. Since I have found below that Walton and Waldon are alter egos, I also find that Walton is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act. *Vulcan Trailer Mfg. Co.*, 283 NLRB 480, 482 fn. 5 (1987). In addition, it has not been denied, and it is therefore deemed admitted, and I so find, that Glass Warehouse Workers and Paint Handlers Local Union 206, International Brotherhood of Painters and Allied Trades, AFL–CIO (Local 206) and United Production Workers Union, Local 17–18 (Local 17–18) are labor organizations within the meaning of Section 2(5) of the Act.

II. THE ALLEGED UNFAIR LABOR PRACTICES

A. *The Issues*

The issues in this proceeding are:

1. Are Walton and Waldon alter egos?
2. Did Respondent engage in threats, interrogation, and create the impression of surveillance, in violation of the Act?
3. Did Respondent unlawfully recognize Local 17–18?
4. Did Respondent unlawfully discharge Feliciano and Prunet?

B. *The Facts*

1. Background

For many years Walton manufactured and installed mirrors from its factory at 61 Walton Street, Brooklyn, New York. The business of the Company included cutting glass to form mirrors, delivering the mirrors to both residential and commercial customers, and fitting the mirrors onto moldings at the customer's residence or place of business. Joseph and Sam Rubin were the owners of Walton. Charles Goldenberg, Joseph Rubin's brother-in-law, was the manager of the factory and in charge of shipping at Walton. Walton recognized Local 206 as the collective-bargaining representative of its production employees. The parties maintained a collective-bargaining agreement effective by its terms from August 1, 1988, through July 31, 1991.[3]

[1] General Counsel's motion to correct transcript is granted.

[2] By order dated March 18, 1993, I granted General Counsel's motion to file an answering brief and allowed Charging Party and Respondent until April 9, 1993, to file reply briefs.

[3] All dates refer to 1991 unless otherwise specified.

Local 206 conducted negotiations with Walton in late July and early August for a new collective-bargaining agreement. Joseph and Sam Rubin represented Walton at these sessions. John Karabin, business agent and treasurer of Local 206, attended these sessions and credibly testified that the Rubins said ''if they have to give any kind of increases they would surely put them out of business. They would be forced to close down.'' Walton offered Local 206 a 6-month extension of the expiring contract. The employees rejected the offer on August 8 and struck the Company for 2 days. Luis Prunet, a Walton employee, credibly testified that during the strike Joseph Rubin told him that he would ''rather close down the company than sign the contract.'' On August 9 the parties commenced further negotiations. They agreed on a contract and the employees voted to ratify it. The new contract, which was entitled ''Memorandum of Agreement,'' was dated August 13, 1991, and is effective August 1, 1991, through July 31, 1994. The new contract provided increases in wages and in welfare, pension, annuity, holiday, and in other benefits. The contract otherwise expressly incorporated the language of Local 206's agreement with the Window and Plate Glass Dealers Association (the Association). The Association contract required, inter alia, that employees be laid off and recalled by job classification seniority.

2. Closing of Walton

On October 17 the Walton facility was closed. Goldenberg credibly testified that some representatives of a taxing authority, possibly the New York State Department of Taxation, appeared at the facility, told everyone to take their belongings and leave, and then proceeded to lock the building. The employees stood outside the building and Goldenberg told them ''the company was going to close and that he will let us know if they were going to reopen or not.'' Karabin credibly testified that on October 25 he visited the Company at 61 Walton Street and saw the Rubins and Goldenberg standing in front of the shop. One of the Rubins told Karabin that ''The union closed us down. We told you if we had to give any increase we would be forced to close down.'' Karabin replied, ''I heard that the I.R.S. closed you down.'' Rubin answered, ''that was only part of it.''

3. Alter ego status

Karabin telephoned Walton on October 21. He credibly testified that Walton bookkeeper, Judy Monoco, answered the phone and told him that the ''company had closed down for a few days to pick up work.'' Goldenberg incorporated a new company, Waldon Mirror and Blinds, on October 24. He owns Waldon in its entirety and he and his wife are the only officers of Waldon.

In late October and early November Goldenberg directly contacted eight former Walton production employees to perform work for his new company. He negotiated individual wage rates with them which differed from the contract rates. He told three of these employees that he did not want a union at his new company and there would not be a union there. Neither Walton or Waldon ever notified Local 206 concerning the establishment of this new company nor did they ever offer to bargain with Local 206 concerning the effects of opening the new Company.

Waldon commenced operations at 220 Stewart Avenue during the second week of November. Goldenberg chose the name Waldon for the new Company because he wanted it ''to look the same as the old company.'' The business of the new Company has been the same as that of the old Company. The eight production employees who Goldenberg hired for the new Company had all worked at Walton when that Company closed. They performed the same work at both Companies. In addition, when Goldenberg started the new Company he hired six salesmen who had all previously worked at Walton. At the commencement of operations Goldenberg also hired John Ricciardi, who is in charge of the drafting department. This is the same work he did at the old Company. In addition, Goldenberg hired Judy Monaco as bookkeeper for Waldon, the same position that she had at Walton. He also hired Nancy Laforte as telephone operator, the same position she held at Walton.

Waldon received five or six deliveries of glass from the old Company during its first 2 weeks in business. The deliveries came in crates which bore the label of the Carolina Mirror Company. Carolina Mirror supplied glass to the old Company but not to Waldon. There is no indication that Waldon made any payments for the glass deliveries. In addition, Waldon received supplies of wood, metal moldings, and approximately 100 finished mirrors from the old Company. There is no evidence that Waldon made any payments for these materials. Also, Waldon obtained a polishing machine and a band saw from the old Company. Again, there is no evidence that Waldon made payments to Walton for these machines.

Waldon purchases wood, aluminum, and venetian and vertical blinds from Certified Lumber, Glazier's Hardware, and Arkwin Home Products, respectively. These companies sold the same materials to Walton. Several employees have seen or handled leftover Walton job tickets while working for the new Company. Waldon has delivered mirrors to approximately 15 individual customers who were previously customers of the old Company and has delivered mirrors to at least 2 commercial customers of the old Company. Waldon has operated three of the vehicles which the old Company financed with GMAC. Title to the vehicles remains with Walton and recourse continues to lie against Walton. The new Company has submitted monthly payments to GMAC for these vehicles on the old Company's accounts. Waldon has made payments for health insurance on the old Company's Empire Blue Cross policy. Waldon has never opened any other account with Empire Blue Cross.

4. Applicable legal principles and conclusions as to alter ego status

In *Crawford Door Sales*, 226 NLRB 1144 (1976), the Board stated the following criteria for establishing alter ego status:

> Clearly each case must turn on its own facts, but generally we have found *alter ego* status where the two enterprises have ''substantially identical'' management, business purpose, operation, equipment, customers, and supervision, as well as ownership.

Not all of these indicia need be present. *Blake Construction Co.*, 245 NLRB 630, 634 (1979), enf. granted in part and de-

nied in part, on other grounds 663 F.2d 272 (D.C. Cir. 1981); *E. G. Sprinkler Corp*., 268 NLRB 1241, 1243 (1984), enfd. sub nom. *Goodman Piping Products v. NLRB*, 741 F.2d 10 (2d Cir. 1984); *Joseph Stern & Sons*, 297 NLRB 1, 5 (1989). The Board has held that common ownership is established if both companies are owned by members of the same family. *J. M. Tanaka Construction*, 249 NLRB 238, 241 fn. 29 (1980); *Superior Export Packing Co*., 284 NLRB 1169, 1170 (1987); *Vinisa II, Ltd*., 308 NLRB 135, 137 (1992).

I find that all the legal criteria have been satisfied. Goldenberg was manager at the old Company and performs the same function at the new Company. The businesses and operation of the two Companies are identical. The equipment used is the same and, in fact, some of the equipment used at the new Company was taken from the old Company. The new Company has approximately 15 of the same retail customers as the old Company and at least two commercial customers that the old Company had. Finally, the Rubins were the owners of the old Company and Goldenberg, Joseph Rubin's brother-in-law, is the sole shareholder of the new Company.

I have credited Goldenberg's testimony that the old Company was closed by representatives of a taxing authority, possibly the New York State Department of Taxation. Citing *P. J. Hamill Transfer Co*., 277 NLRB 462 (1985), Respondent argues that under such circumstances alter ego status cannot be found. I believe that *Hamill* is distinguishable. In that case the company ceased operations after its bank account was garnisheed in satisfaction of a judgment obtained against it. In the instant proceeding Goldenberg was unable to give any definite information as to who closed Walton. He testified that ''people from one of the tax companies or whatever showed up and told us that they were [closing] the building.'' When asked whether these people identified themselves, he testified ''they were either New York State tax, some tax people.'' Although the information as to which taxing authority closed the facility, and under what circumstances, was surely available to Respondents, that evidence was not introduced into the record. Thus there is no evidence as to the nature of the closing, whether it was temporary or whether it was something that could be easily satisfied. Indeed, I have credited Karabin's testimony that at the negotiating sessions during July and August the Rubins said that if they would have to give any increases they would be forced to ''close down.'' I have also credited Prunet's testimony that during the strike Joseph Rubin told him that he would rather close down the Company than sign the contract. In addition, on October 25 when Karabin told the Rubins that ''I heard that the I.R.S. closed you down,'' Rubin answered ''that was only part of it.'' The Rubins had shown that they did not intend to operate their business under the terms of the new contract. I believe that the closing by the taxing authority was used by the Rubins as a convenient vehicle to close the old facility, open at a new location, and thus attempt to avoid the obligations of the contract.

The *Hamill* case is further distinguishable inasmuch as in that case there were critical differences in the nature of operations of the two companies. The new company, Brennan, did not have Hamill's intrastate authority to haul freight in Illinois and provided employment only for its owners. In this proceeding, however, the nature of the operations of the two Companies is identical. Both the old and new Companies manufactured and installed mirrors for retail and commercial customers. Indeed, Goldenberg testified that he chose the name Waldon so that it would ''look the same as the old company.'' Waldon received glass, supplies of wood, metal moldings, and approximately 100 finished mirrors from the old Company without any payment to Walton. In addition, it obtained a polishing machine and a band saw from Walton without payment. Also, there were instances where Waldon employees worked on leftover Walton job tickets. Finally, Waldon has submitted monthly payments to GMAC for vehicles, title to which remain with Walton, and has made payments for health insurance on Walton's insurance policy.

Based on the above, I believe that *Hamill* is distinguishable and I find that the record has established common family ownership, substantially identical management, business purpose, operations, equipment, customers, and supervision. Accordingly, I find that Waldon is the alter ego of Walton.

5. Alleged 8(a)(1) violations and recognition of Local 17–18

Shortly after Walton closed, when Goldenberg contacted the former production employees to ask them if they were interested in working for the new Company, he told some of them that he did not want a union at the new Company and that the new Company ''would not have any union.'' When the employees appeared at the new facility, Ricciardi distributed job applications to Feliciano and Prunet. He also gave them authorization cards for Local 17–18 which he described were part of the application form. Goldenberg gave four other employees job applications which they filled out and returned. He also introduced them to a man whom he described as their source for medical benefits or as his business partner. This man distributed cards which several of the employees filled out and returned. After Mullings, Burrus, Fason, and McKinnie returned their cards, Goldenberg approached them and said ''I told you guys I didn't want no union here . . . you stabbed me in my back.'' He then said that he was going to ''close the business down'' and that anyone who tried to start a union would be ''out of here.''

In mid-November Moreano, a Local 17–18 agent, spoke to Feliciano and Prunet in Waldon's parking lot. The two employees and Moreano then proceeded into the facility. Goldenberg approached Feliciano and Prunet and asked them ''who had called that union guy?'' Approximately 2 or 3 days later, Karabin came into the parking lot prior to the start of the workday and spoke with Feliciano and Prunet. When the facility opened and the employees went inside, Goldenberg approached the employees and asked ''who had called Local 206 there?'' Feliciano credibly testified that Goldenberg said ''he was going to find out who had called Local 206 there.''

Kenneth Mullings appeared to me to be a credible witness. He testified that in March 1992 Joseph Rubin told him that he needed people to work at the new Company. Rubin asked Mullings whether he knew anyone and Mullings asked ''what happened to the old guys [who] used to work in the old company?'' Mullings credibly testified that Rubin replied that he wanted ''new guys because those guys want 206. They want 206 union and he's not getting that 206 union, because if 206 comes back there, he's going to close the place down again.''

6. Conclusions concerning alleged 8(a)(1) violations

I have found that Goldenberg told several of the employees at the time he hired them for Waldon that there would not be a union at the new Company. This constitutes a violation of Section 8(a)(1) of the Act. See *L. W. Le Fort Co*., 290 NLRB 344 (1988). I have also found that Goldenberg threatened employees that he was going to close the business and that anyone who tried to start a union would be ''out of here.'' I find that these statements constitute unlawful threats of plant closure and discharge in violation of Section 8(a)(1). See *Hall Industries*, 293 NLRB 785, 790 (1989).

I have also found that in mid-November Local 17–18 Agent Moreano spoke with Feliciano and Prunet in Waldon's parking lot. Soon thereafter Goldenberg asked Feliciano and Prunet ''who had called that union guy?'' The record does not show that Respondent had any basis at this time to identify Feliciano or Prunet as union supporters. I find that Goldenberg's question constituted unlawful interrogation. See *Sorenson Lighted Controls*, 286 NLRB 969, 976–977 (1987); *Sunnyvale Medical Clinic*, 277 NLRB 1217 (1985). In addition, I have found that 2 or 3 days after this incident Karabin spoke with Feliciano and Prunet in Waldon's parking lot. When these employees entered the facility Goldenberg asked them who had called Local 206 there. Goldenberg then told them that ''he was going to find out who had called Local 206 there.'' In addition to the questioning of the employees constituting unlawful interrogation, I find that Goldenberg's telling Feliciano and Prunet that he was going to find out who had called Local 206 constitutes the unlawful impression of surveillance. See *Haynes Motor Lines*, 273 NLRB 1851, 1855 (1985).

At the hearing, the complaint was amended to allege that in March 1992 Respondent told employees that it would not offer employment to employees who had previously worked at the Walton Street facility because those employees supported Local 206. In addition, the complaint was amended to allege that at the same time Respondent warned its employees that if Local 206 returned to the new facility Respondent would shut down again. I have found that in March 1992 Joseph Rubin told Mullings that Waldon did not want to rehire some of the old employees because ''those guys want 206.'' I find this statement to be unlawful interference in violation of Section 8(a)(1) of the Act. See *D & K Frozen Foods*, 293 NLRB 859, 873 (1989). In addition, in the same conversation Rubin told Mullings ''if 206 comes back . . . he's going to close the place down again.'' I find that this constitutes an unlawful threat of plant closure, in violation of Section 8(a)(1) of the Act. See *Hall Industries*, supra, 293 NLRB at 790.

7. Conclusions concerning recognition of Local 17–18

Goldenberg conceded that Waldon recognized Local 17–18 in December 1991 as the collective-bargaining representative of its production employees and on January 16, 1992, it entered into a collective-bargaining agreement with Local 17–18. Waldon, as an alter ego of Walton, must recognize Local 206 and honor the Memorandum of Agreement which Walton entered into with Local 206. See *Advance Electric*, 268 NLRB 1001, 1004 (1984). Waldon's recognition and contracting with Local 17–18, under the circumstances, violated Section 8(a)(1) and (2) of the Act. See *Christopher Street Corp*., 286 NLRB 253, 257 (1987). Waldon's collective-bargaining agreement with Local 17–18 contains a provision requiring the unit employees to become and remain members of Local 17–18. The agreement also contains a provision which requires Waldon to deduct assessments and dues from the unit employees and to remit them to Local 17–18. I find that Respondent's maintenance of these provisions in its contract with Local 17–18 violates Section 8(a)(1), (2), and (3) of the Act. See *Prospect Gardens of Norwalk*, 177 NLRB 136, 139–140 (1969).

8. Failure to recall employees

Four other production employees were employed by Walton immediately prior to its closing, Lyndon York, Jose Lozana, Sam Furnace, and Roberto Fontanez. These employees were not recalled by Waldon. Instead, in March 1992 Waldon hired three individuals named Mario, Patrick, and Nacho to work as drivers and helpers. Mario worked for approximately 1 month; Patrick worked for approximately 5 weeks; and at the time of the hearing Nacho was still working for Waldon. In addition, Waldon hired a helper for employee Duke, who worked for the Company approximately 3–5 months. I find that Respondent's hiring the four new individuals without recalling York, Lozana, Furnace, and Fontanez, violated the layoff and recall provisions of the Association agreement which is expressly incorporated into the Memorandum of Agreement between Local 206 and Walton. This constitutes a violation of Section 8(a)(1) and (5) of the Act. See *Accurate Die Casting Co*., 292 NLRB 982, 988–989 (1989).

9. Discharge of Feliciano and Prunet

George Feliciano worked as an installer and Luis Prunet as a driver/helper for Waldon. They regularly worked as a team. On January 22, 1992, they were assigned to perform work for four customers, the final customer being Robert Anderson of Utica Avenue in Brooklyn. Feliciano testified that he and Prunet arrived at Anderson's home around 2:15 p.m. and they finished working there at about 3:30 p.m. They drove straight to Feliciano's home and arrived at about 4 p.m. Feliciano testified that they failed to take the customary half-hour lunchbreak that day and they therefore reported to Ricciardi the following morning that they had finished work at 4:30 p.m.

Goldenberg requested that Waldon's employees attend a meeting on Friday, January 31, 1992. Three Local 17–18 agents conducted the meeting and all Waldon's drivers and helpers attended. The Local 17–18 agents began to explain to the employees the contents of the collective-bargaining agreement. Feliciano told the Local 17–18 agents ''I don't need any union because I already have a union, Local 206.'' Feliciano then took off his Local 206 hat, showed it to the Local 17–18 agents, said ''this [is] my union, Local 206'' and then he put the hat back on his head. He and Prunet then left to go to their truck. One of the Local 17–18 agents followed Feliciano and Prunet to the truck and asked Feliciano why he had been so rude. Feliciano repeated that he didn't need a union ''because I already have my union . . . Local 206.'' At the same time a Local 17–18 approached Prunet and told him that he was a representative of Local 17–18. Prunet told the agent that he ''didn't know anything about

Local 17–18.'' The agent told Prunet that he had already signed an authorization card for Local 17–18 and Prunet answered that he had not signed such a card. The agent then gave him another card to sign and Prunet said that he couldn't sign it because it was written in English.

Goldenberg phoned Feliciano at home the next workday, Monday, February 3. Goldenberg asked Feliciano to come to the facility and to bring along Prunet. Feliciano and Prunet met with Goldenberg that afternoon at which time Goldenberg told the two employees that he was laying them of. The explanation that Goldenberg gave the employees for the layoff was that ''business was kind of slow.''

Goldenberg testified that Feliciano and Prunet were laid off on February 3 because business was slow and because the employees were ''stealing time from the company.'' Goldenberg testified that he discovered that Feliciano and Prunet were stealing time when a customer satisfaction letter was received from Robert Anderson which indicated that Feliciano and Prunet arrived at Anderson's home at approximately 10 a.m. and departed at approximately noon.

Daniel White, a Waldon salesman, testified that he met Anderson in his Utica Avenue home in early or mid-January 1992. White testified that Anderson called the office again in February 1992 and requested additional mirrors and at that time specifically asked for White. White then set up a second appointment with Anderson and sometime subsequently, still in February, met Anderson again at his Utica Avenue home. White testified that at this meeting, in addition to placing an order for more mirrors, White presented Anderson with a customer survey. White testified that he read the questions on the survey to Anderson, and after Anderson responded, White entered the answers on the survey.

Anderson testified that Feliciano and Prunet came to his home sometime in January to install mirrors. He testified that they arrived early in the afternoon and they finished at approximately 3:30 p.m. Anderson further testified that either in February or March he ordered more mirrors and several days thereafter White came to his home. He said that White asked him how he liked the prior service and he told him it was excellent, at which time White wrote something down. He further testified that White never asked him what time the workers arrived at his home or what time they departed.

On October 15, 1992, counsel for the General Counsel, Jonathan Leiner, wrote to counsel for Respondent advising them that on October 13 Anderson had called Leiner and asked him to request Feliciano to telephone Anderson. Leiner responded that he was ''unsure'' whether he would transmit that information to Feliciano. Anderson then commented ''what if I came down there and spoke to that judge and told him that I was lying.'' Anderson then hung up the telephone. Shortly thereafter Leiner telephoned Anderson and asked him twice whether his testimony at the hearing had been truthful. Anderson ''refused to respond.'' Based on counsel for General Counsel's letter, counsel for Respondent moved to reopen the record. By order dated November 16, 1992, I granted Respondent's motion, the record was reopened, and a hearing was scheduled for December 7, 1992. The record contains evidence that counsel for Respondent attempted to serve a subpoena on Anderson but was unsuccessful. Anderson did not appear at the hearing held on December 7.

10. Conclusions concerning discharge of Feliciano and Prunet

Under *Wright Line*, 251 NLRB 1083, 1089 (1980), enfd. 662 F.2d 899 (1st Cir. 1981), cert. denied 455 U.S. 989 (1982), the Board requires that the General Counsel make a prima facie showing sufficient to support the inference that protected conduct was a motivating factor in the employer's decision. Once this is established, the burden shifts to the employer to demonstrate that the ''same action would have taken place even in the absence of the protected conduct.''

I have found that at the January 31 meeting Feliciano told the Local 17–18 agents that ''I don't need any union because I already have a union, Local 206'' and that he then took his Local 206 hat and displayed it to the Local 17–18 agents. On the same day Prunet denied having signed an authorization card for Local 17–18 and when the Local 17–18 agent gave him a new authorization card to sign, Prunet did not sign it. On January 31 Respondent employed only eight production employees. Utilizing the small plant doctrine and the fact that Feliciano and Prunet were discharged on February 3, the next workday after January 31, I infer that Respondent knew of Feliciano and Prunet's sentiments concerning Local 17–18. See *Food Cart Market*, 286 NLRB 1016, 1018 (1987). I have also previously found that in November 1991 Karabin spoke with Feliciano and Prunet in Waldon's parking lot. Immediately thereafter Goldenberg asked Feliciano and Prunet who had called Local 206 there. I infer from Goldenberg's question his displeasure with Local 206. This is buttressed by my finding that in March 1992 Joseph Rubin told Mullings that he did not want to employ certain employees who had previously worked at the old facility because ''those guys want 206.'' Based on the above, I find that General Counsel has made a prima facie showing sufficient to support the inference that protected conduct was a motivating factor in Respondent's decision to discharge Feliciano and Prunet on February 3.

As mentioned earlier, Goldenberg testified that he laid off Feliciano and Prunet because business was slow and because the employees were ''stealing time from the company.'' With respect to the assertion that business was slow, I find that Respondent has not sustained its burden. The record shows that to the contrary, business increased. In December 1991 sales totaled $38,513; in January 1992 sales totaled $50,220. For the month ending February 28, 1992, sales increased to $52,446 and for the month ending March 31, 1992, sales increased to $92,564. While Goldenberg maintained that the alleged declining business which underlay the discharges derived from the long delay between customers' orders for mirrors and their payment for those mirrors many months afterwards, Respondent presented no evidence to substantiate this. See *Bay Metal Cabinets*, 302 NLRB 152, 178–179 (1991). In addition, Respondent Waldon hired additional drivers and helpers in March 1992. See *Alliance Rubber Co.*, 286 NLRB 645, 647 (1987). Finally, if Feliciano and Prunet were laid off because of declining business, Respondent has not sustained its burden of showing why these two employees were laid off and not other employees instead.

The additional reason given by Goldenberg for the layoffs was that the two employees stole time from the Company. With respect to the testimony of Robert Anderson, because of the events which took place concerning him after he testi-

fied, I have decided not to rely on his testimony.[4] I am crediting Feliciano's testimony that he and Prunet departed from the Anderson home at approximately 3:30 p.m. With respect to Goldenberg's assertion that the two employees were laid off on February 3 because Goldenberg had discovered that they were stealing time, even were such a discovery made, it is highly doubtful that the discovery was made by February 3. February 3, 1992, came out on a Monday, the first working day of the month. White testified that Anderson called the office sometime in February, requesting additional mirrors and specifically asking for White. White subsequently received notification from the office and White then proceeded to set up an appointment to see Anderson. White did not specify the dates in February in which these events took place. It is highly unlikely that even had the call from Anderson been received as early as February 3, that White would have been notified that very same day, that he would have made an appointment that same day, that he would have actually met with Anderson on February 3, and that Goldenberg was notified of the ''stealing of time'' that day, prior to Goldenberg's meeting with the two employees. Indeed, when White was questioned as to what he did with the survey after he left Anderson's home, he testified ''eventually I handed it in or mailed it into my office.'' It is much more likely that the meeting with Anderson took place later in the month and that the results of the survey were made known to Goldenberg later in the month. Accordingly, on February 3 Goldenberg did not yet know of the alleged stealing of time.

Goldenberg conceded that he had no evidence that these employees stole time on any other occasions. The survey itself indicates a possible lack of authenticity. All the Company's other customer surveys contain an order number, however, the survey signed by Anderson does not. Waldon mails the surveys to the customers the day after it services them. Yet, in this instance, White chose to carry the survey to Anderson's home and to fill it out with the customer. In addition, Goldenberg noted ''p.m.'' beside Anderson's name on the January 22 delivery schedule. Goldenberg therefore anticipated that Feliciano and Prunet would reach this final customer only in the afternoon. Furthermore, Waldon's delivery schedules for other employees support the likelihood that Feliciano and Prunet did not complete the Anderson job until late in the afternoon. Feliciano and Prunet made four stops on January 22 which comprised 148 square feet of work. A different pair of Waldon employees performed only three assignments on December 8, 1991, which comprised only 120 square feet but they also completed work at 4:30 p.m. that day. A third pair of Waldon employees required until 3:45 p.m. on November 15, 1991, to perform only two assignments which comprised 136 square feet. Accordingly, I find that Respondent has not sustained its burden of showing that the employees were discharged because they stole time from the Company. Therefore, I find that Respondent, not having sustained its burden, has violated Section 8(a)(1) and (3) of the Act by discharging Feliciano and Prunet on February 3, 1992.

[4] Counsel for Respondent requests that I strike the testimony of both Feliciano and Anderson because Feliciano spoke with Anderson during the course of the hearing. Counsel argues that this constitutes a violation of the sequestration order. Inasmuch as I am not relying on Anderson's testimony, it is not necessary that I determine whether his testimony should be stricken. With respect to Feliciano, his main testimony took place on July 8 and 29, 1992, prior to the testimony of Anderson. Rule 615 of the Federal Rules of Evidence provides that the ''court shall order witnesses excluded so that they cannot hear the testimony of other witnesses.'' When Feliciano testified, Anderson had not yet testified. Thus, it would appear that Feliciano's conversation with Anderson, as it relates to Feliciano's testimony, was not a violation of the sequestration order. See *Seattle Seahawks*, 292 NLRB 899, 906–908 (1989); *U.S. v. Shurn*, 849 F.2d 1090, 1094 (8th Cir. 1988). Even were the conversation violative of the sequestration order, I believe it was of a ''technical'' nature. See *Conair Corp*., 261 NLRB 1189, 1207 fn. 23 (1982), enf. granted in part and denied in part, on other grounds, 721 F.2d 1355 (D.C. Cir. 1983).

CONCLUSIONS OF LAW

1. Respondent Walton Mirror Works, Inc. and Respondent Waldon Mirror and Blinds, Inc. are employers engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.

2. Local 206 and Local 17–18 are labor organizations within the meaning of Section 2(5) of the Act.

3. Respondent Waldon is, for the purposes of this proceeding, the alter ego of Respondent Walton.

4. The unit as set forth in article IA of the collective-bargaining agreement between Local 206 and Respondent Walton, which is effective by its terms from August 1, 1988, through July 31, 1991, constitutes a unit appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act.

5. At all material times Local 206 has been the exclusive collective-bargaining representative of the employees in the appropriate unit, within the meaning of Section 9(a) of the Act.

6. By failing and refusing to recognize and bargain with Local 206 as the exclusive representative of its employees in the appropriate unit, by failing to honor the collective-bargaining agreement with respect to such employees, by failing to apply to such employees the terms and conditions of the agreement, by unilaterally changing existing terms and conditions of employment, by bypassing Local 206 and dealing directly with the employees in the unit, and by relocating without first notifying Local 206 and without giving Local 206 an opportunity to bargain collectively concerning the effects of such relocation, Respondent has violated Section 8(a)(1), (2), and (5) of the Act.

7. By interrogating employees about their union activities, by threatening plant closure, and by creating an impression of surveillance, Respondent has engaged in unfair labor practices within the meaning of Section 8(a)(1) of the Act.

8. By discharging George Feliciano and Luis Prunet for their union activities, Respondent has engaged in unfair labor practices within the meaning of Section 8(a)(1) and (3) of the Act.

9. By failing to recall Lyndon York, Jose Lozana, Sam Furnace, and Roberto Fontanez, Respondent has engaged in unfair labor practices within the meaning of Section 8(a)(1) and (5) of the Act.

10. The aforesaid unfair labor practices constitute unfair labor practices affecting commerce within the meaning of Section 2(6) and (7) of the Act.

THE REMEDY

Having found that Respondent has engaged in certain unfair labor practices, I find it necessary to order Respondent to cease and desist therefrom and to take certain affirmative action designed to effectuate the policies of the Act.

Having found that Respondent Waldon is the alter ego of Respondent Walton and has continued to operate the business but has failed and refused to recognize Local 206 as the collective-bargaining representative of its employees, or to comply with the terms of the collective-bargaining agreement between Local 206 and Respondent Walton, I shall order Respondent Waldon to recognize Local 206 as the representative of its employees and to honor and apply the terms of that agreement to its employees. In addition, I shall order Respondent to make whole its employees by making the contractually established payments required by the collective-bargaining agreement[5] and by reimbursing employees for any expenses ensuing from Respondent's unlawful failure to make such required payments, as provided in *Kraft Plumbing & Heating*, 252 NLRB 891 fn. 2 (1980), enfd. mem. 661 F.2d 940 (9th Cir. 1981).

Respondent, having discharged Feliciano and Prunet in violation of the Act, I find it necessary to order Respondent to offer them full reinstatement to their former positions, or if such positions no longer exist, to substantially equivalent positions, without prejudice to their seniority or other rights and privileges, and make them whole for any loss of earnings that they may have suffered from the time of their discharges to the date of Respondent's offers of reinstatement. Backpay shall be computed in accordance with the formula approved in *F. W. Woolworth Co*., 90 NLRB 289 (1950), with interest as computed in *New Horizons for the Retarded*, 283 NLRB 1173 (1987).[6]

Respondent, having failed to recall Lyndon York, Jose Lozana, Sam Furnace, and Roberto Fontanez, I shall order that Respondent recall these employees to the extent it has available positions. Those employees for whom no positions are available shall be placed on a preferential hiring list in accordance with their seniority.[7]

[Recommended Order omitted from publication.]

[5] *Merryweather Optical Co*., 240 NLRB 1213, 1216 fn. 7 (1979).

[6] Under *New Horizons*, interest is computed at the ''short-term Federal rate'' for the underpayment of taxes as set out in the 1986 amendment to 26 U.S.C. § 6621.

[7] In the event sufficient positions are not available, I shall leave to the compliance stage of this proceeding to determine which of the employees should be recalled and the amount of backpay, if any, due the employees. Backpay shall be computed as outlined above.